

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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STATE OF OKLAHOMA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-PJC
	)	
TYSON FOODS, INC., et al.	)	
	)	
Defendants.	)	
	)	

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**POULTRY DEFENDANTS’ JOINT MOTION IN LIMINE TO PRECLUDE  
PLAINTIFFS FROM ATTRIBUTING TO POULTRY DEFENDANTS ANY EVIDENCE  
RELATED TO THE USE OF POULTRY LITTER BY CATTLE RANCHERS,  
FARMERS, AND OTHER INDEPENDENT THIRD PARTIES**

Come now Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., George’s, Inc., George’s Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, Simmons Foods, Inc., Cal-Maine Foods, Inc., and Cal-Maine Farms, Inc (the “Defendants”) and hereby move the Court to preclude certain evidence, testimony, and argument pursuant to Federal Rules of Evidence 402 and 403. In support thereof, Defendants state:

1. Defendants move *in limine* that Plaintiffs, their counsel, and any witnesses offered by Plaintiffs be precluded from referring, implying, or directly attributing to Defendants any responsibility for the actions of cattle ranchers, farmers, and other independent third parties who are not alleged agents of the Defendants. Defendants further move *in limine* that Plaintiffs, their counsel, and any witnesses offered by Plaintiffs be precluded from offering as evidence against Defendants any photographs, documents, calculations, figures, or other evidence that include or relate to the use of poultry litter by cattle ranchers, farmers, and other independent third parties

who are not alleged agents of the Defendants as such evidence is inadmissible under Federal Rules of Evidence 402 and 403.

2. Evidence should be excluded if the probative value is substantially outweighed by considerations of trial efficiency, confusion of the issues, misleading the jury, or potential unfair prejudice to the Defendants. *See* F.R.E. 403. In this instance, Plaintiffs' attributing to Defendants evidence related to the use of poultry litter by cattle ranchers, farmers, and other independent third parties would be misleading, confusing and highly prejudicial. Such evidence is irrelevant to Plaintiffs' claims against Defendants and thus, also inadmissible under F.R.E. 402.

3. In this action, Plaintiffs claim that the land application of poultry litter in the Illinois River Watershed ("IRW") by independent growers under contract with individual Defendants violates several state and federal laws and regulations. Plaintiffs allege that these independent growers are "agents" of each Defendant and seek injunctive relief to prevent the future spreading of poultry litter in the IRW.

4. The undisputed evidence shows that the land application of poultry litter in the IRW extends far beyond application by growers under contract with the Defendants. There is a vibrant market for poultry litter in the IRW, promoted and encouraged by the State of Oklahoma. *See* Oklahoma Litter Market, *available at* <http://www.ok-littermarket.org/>. Poultry litter is applied as fertilizer by cattle ranchers, farmers, and third parties not associated with the Defendants in any capacity. Michael Langley Depo, 9:13-15; 9:24-10:1 (November 7, 2007) (Ex. A); Michael Traylor Depo, 7:25-8:20 (November 27, 2007) (Ex. B). Oklahoma regulations contain provisions governing these third-party applications of litter. 2 Okla. Stat. § 10-9.16 *et seq.*; Langley Depo, 50:17-51:8; 52:11-18; 55:25-56:12; Traylor Depo., 49:24-50:13.

5. Once litter leaves a contract grower's property and enters the market for litter, the grower no longer controls where and in what quantity that litter is land applied. Rather, the end user of the litter makes these decisions independent from the Defendants or any of their alleged agents:

Q When you have land applied poultry litter on land other than your own land, who made the decision where the litter would be applied?

A The people that we was putting litter on for.

Q The landowner?

A The landowner.

Q What are the types of folks or operations that were customers that bought poultry litter, and what I mean is, is it like cattlemen, hay raisers, row croppers; who are the folks out there that are buying and asking for litter to be applied on their land?

A Cattlemen and hay raisers.

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Q. I just want to make sure I understood your testimony earlier concerning the farms that or the barns that used to be owned by Tyson in Westville and specifically Complex 1 and Complex 15. If I understand your testimony correct, you purchased litter from the barns at Complex 1 and Complex 15; correct?

A That's correct.

Q And when you purchased that litter, you made the determination of where that litter was going to go; correct?

A That's correct.

Q Tyson wasn't involved in that decision?

A No.

Langley Depo, 58:2-14; 70:2-15.

6. Plaintiffs are well aware that substantial quantities of poultry litter are purchased and land applied in the IRW by independent third parties. Plaintiffs have not presented evidence

that Defendants or their alleged agents maintain control over this litter. Plaintiffs do not allege that third-party cattlemen or other farmers not under contract with Defendants are the Defendants' agents. Nor could they. Accordingly, references and inferences attributing this third-party use of poultry litter to the Defendants would be misleading, confusing and highly prejudicial. Accordingly, such references and inferences are irrelevant, prejudicial, and inadmissible under Rules 402 and 403 of the Federal Rules of Evidence.

WEREFORE, the Defendants move the Court for precautionary instructions preventing Plaintiffs, their counsel, experts retained by Plaintiffs, and other witnesses offered by Plaintiffs from making reference or inference implying or directly attributing to Defendants any responsibility for the actions of cattle ranchers, farmers, and other independent third parties who are not alleged agents of the Defendants and from offering as evidence against Defendants any photographs, documents, calculations, figures, or other evidence that include or relate to the use of poultry litter by cattle ranchers, farmers, and other independent third parties who are not alleged agents of the Defendants as such evidence is inadmissible under Federal Rules of Evidence 402 and 403.

Respectfully submitted,

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